

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In re the Matter of)	
)	
Negotiated Channel Exchange Arrangement)	FCC File No. 20050210ATW
Little Rock and Pine Bluff, AR)	
)	
Second Periodic Review of the)	
Commission's Rules and Policies)	MB Docket No. 03-15
Affecting the Conversion)	
To Digital Television)	

To: Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
ATTN: Media Bureau

OBJECTION TO NEGOTIATED CHANNEL EXCHANGE ARRANGEMENT

The Arkansas Educational Television Commission (AETC), licensee of noncommercial educational (NCE) television Station KETS-DT, Little Rock, Arkansas hereby objects to the above-referenced Negotiated Channel Exchange Arrangement (NCA) between Agape Church, LLC (Agape), licensee of Station KVTN(TV), Pine Bluff, AR and KATV, LLC (KATV), licensee of Station KATV(TV), Little Rock. AETC requests that the Commission adopt the alternate channels elected by both stations so as to make Channel 7 at Little Rock available in the Second Round Election by stations still in need of a usable in-core DTV channel. As demonstrated below, AETC is the ideal candidate for that channel.

The Parties. Commercial television Station KATV (NTSC 7/DTV 22), Little Rock, Arkansas (Little Rock-Pine Bluff DMA), an ABC network affiliate, is licensed to KATV, LLC, 100% of the voting ownership of which is owned by group owner Allbritton

Communications Co (Allbritton).¹ Commercial television Station KVTN (NTSC 25/DTV 24), Pine Bluff, Arkansas is licensed to Agape Church, Inc. which is owned by Victory Television Network (VTN).² AETC, a publicly funded agency of the State of Arkansas, operates a statewide network consisting of five NCE television stations: KETS (NTSC 2/DTV 5), Little Rock; KAFT (NTSC 13/DTV 9) Fayetteville; KEMV (NTSC 6/DTV 13), Mountain View; KETG (NTSC 9 /DTV 13), Arkadelphia; and KTEJ (NTSC 19/DTV 20), Jonesboro. AETC's five stations provide 2.6 million Arkansas residents with their only free over the air public television signal. AETC is also the permittee of new noncommercial educational television station KETZ, NTSC Channel *30, El Dorado, for which the Commission recently adopted a channel change to DTV *12.³

The Negotiated Channel Arrangement. Public Notice "DTV Channel Election Issues - Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings" (DA 05-519), released March 1, 2005, listed an agreement, presumably between Allbritton and VTN, by which Allbritton would retain its Station KATV(TV) DTV operation on channel 22, whether or not the NCA is approved by the Commission, and VTN would receive Channel 7 for its DTV operation. Agape elected its allotted DTV channel 24 in the event the NCA is not approved. The FCC procedures

¹ See "Ownership Report for Commercial Broadcast Stations" FCC File No. BON - 20050128AGU.

² Agape is also the licensee of Station KVTH (NTSC 26/DTV 14), Hot Springs, Arkansas (Little Rock - Pine Bluff DMA). Programming on KVTN and KVTH appears to be identical based on the schedule available on the stations' common website www.vntv.com/viewing/index.html.

³ Report and Order in Docket MB04-282, 20 FCC Rcd 5 (2005).

regarding NCAs do not provide for filing of NCAs unless requested by the Commission.⁴ Moreover, the parties have not released information regarding their agreement. Consequently, neither AETC nor the Commission knows any of its provisions, including, for example, whether or not there is consideration being paid to Allbritton by VTN.

AETC's Interest. As indicated above, AETC's Station KETS, Little Rock, has been operating on NTSC Channel 2 and has been allotted DTV Channel 5. As permitted by the FCC, AETC released both of its low-band VHF channels in the first round so that the station would be treated as a "two out-of-core" channel station; consequently, AETC must participate in the second round of channel elections.⁵ The FCC permitted such election by licensees allotted two low-band VHF channels because it recognized that "low VHF channels may not offer licensees the ability to provide the best DTV service to the public."⁶ It would obviously be beneficial to AETC, AETC's viewership and public broadcasting in the State of Arkansas if Channel 7 were available as an option for allotment during the second round to Station KETS. In connection with the previously mentioned change of channel for Station KETZ, El Dorado, AETC demonstrated that it could operate a DTV station on VHF Channel *12 at approximately \$175,000 less per year than a DTV station on UHF Channel 30.⁷ It would be of obvious public interest for the state to save similar money on the operation of Station KETS if

⁴ Public Notice "DTV Channel Election Issues - Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions," DA 05-273, released February 1, 2005, p. 2.

⁵ Second DTV Periodic Review Report and Order ("Second DTV Review"), 19 FCC Rcd 18,279, para. 63 at fn.129 (2004); "Instructions for FCC 382," p. 2.

⁶ Id.

⁷ See Report and Order (El Dorado, Arkansas), DA 04-4058, released January 5, 2005, fn. 2).

Channel 7 could be allotted for the station instead of a UHF channel. Perhaps more important, it is AETC's belief that DTV Channel 7 will permit replication of its existing Station KETS NTSC Channel 2 coverage area.

Objection to Negotiated Channel Arrangements. The Commission has stated a simple standard by which to judge NCAs: "If...we find that the NCA reasonably could be construed to have an adverse impact on the interests of a station not a party to the NCA, or is otherwise not in the public interest, the NCA will be rejected."⁸ AETC is not a party to the NCA, nor was it contacted by the parties to discuss the Round Two availability of Channel 7. Clearly, AETC will suffer an adverse impact on its interests, and on the interests of the citizens and taxpayers of Arkansas, if Channel 7 is not among the channels available for the second round election in Little Rock. Moreover, Agape already has a channel on which it can provide almost full replication (99.9% according to the Table released with the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, 7639 (1998)). The public interest requires that the FCC preserve high-band VHF channels like 7 for licensees that have obviously inferior and inadequate DTV allotments over private preferences of licensees like Agape and KATV. The NCA should be rejected, the alternative channel choices specified for Stations KVTN and KATV (Channels 22 and 24, respectively) should be "locked in" and Channels 7 and 25 released for use by stations like AETC's KETS-DT requiring usable in-core channels.


⁸ Public Notice "DTV Channel Election Issues - Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions," DA 05-273, released February 1, 2005, p. 1; Second DTV Review at para. 45 ("Such negotiated agreements are subject to Commission approval, including particular consideration of the effect of the channel election rights of...any licensee not a party to the negotiated channel election agreement").


In the event that the Commission is considering approval of the NCA despite this opposition, it is incumbent upon the agency to require the NCA between the parties be made available for public inspection in order to make any reasoned determination whether approval of the NCA, on balance, would serve the public interest. The Commission should also establish a deadline for supplemental comments based on the content of the NCA. AETC reserves the right to supplement this Opposition in the event the NCA becomes available for review.

WHEREFORE, for the foregoing reasons, AETC respectfully requests rejection of the NCA between stations KVTN and KATV.

Respectfully submitted,

ARKANSAS EDUCATIONAL TELEVISION COMMISSION

By: 
Steven C. Schaffer

By: 
Malcolm G. Stevenson

SCHWARTZ, WOODS & MILLER
1350 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
202/833-1700

Its Attorneys
March 15, 2005

DECLARATION

I, Gary Schultz, hereby declare under penalty of perjury, that:

- (1) I am the Director of Engineering of Arkansas Educational Television Commission, and
- (2) except for the facts of which the Federal Communications Commission may take official notice, the facts stated in the foregoing OBJECTION TO NEGOTIATED CHANNEL EXCHANGE ARRANGEMENT are true and correct.

Dated this 15th day of March, 2005



Gary Schultz

CERTIFICATE OF SERVICE

I, Mary Kay McMahon, Secretary in the law offices of Schwartz, Woods & Miller, do hereby certify that I have on this 15th day of March, 2005, sent by overnight courier, copies of the foregoing **OBJECTION TO NEGOTIATED CHANNEL EXCHANGE ARRANGEMENT** to:

* Thomas Van Wazer, Esq.
Sidley Austin Brown & Wood, LLP
1501 K Street, NW
Washington, DC 20005

* John E. Fiorini, III, Esq.
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

* Ms. Nazifa Sawez
Media Bureau
Federal Communications Commission
445 12 Street, S.W., Room 2A-726
Washington, D.C. 20554

Mr. Jim Grant
Agape Church, Inc.
701 Napa Valley Drive
Little Rock, AR 72211

Mr. Lawrence Dale Nicholson
President and General Manager
KATV, LLC
401 Main Street
Little Rock, AR 72201



Mary Kay McMahon

* By Hand